Supreme Court, U.S.
FILED
OCT 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1088

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

vs.

ALAN WOODS and CARA WOODS,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
For the Eleventh Circuit

REPLY BRIEF OF PETITIONER

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PARTIES TO THE PROCEEDING

A list of parties and affiliated or related parties is printed at page ii, Petition for Writ of Certiorari.

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ARGUMENT

I. INTRODUCTION

This Reply Brief will restate the issues raised in Burlington Northern's previous brief and discuss the responses, if any, which were made by the Woods.

II. THE ALABAMA AFFIRMANCE PENALTY IS UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION AND DUE PROCESS CLAUSES

We note at the outset the Woods' contention that this Court should be governed by *Louisville & Nashville Railroad Co. v. Stewart,* 241 U.S. 261 (1916) which they claim "upheld the

validity of a virtually identical statute." (Respondents' Brief, p. 7). As we stated previously, the *Stewart* case was not concerned with Equal Protection or with any of the issues involved in this case. (Petitioner's Brief, p. 29 n. 14). The railroad in *Stewart* simply contended that the state court was not authorized to impose a state affirmance penalty because the substantive claim was governed by the Federal Employers' Liability Act ("FELA"). (*See* Brief of Louisville & Nashville Railroad, Plaintiff in Error, pp. 10-12).

Our construction of *Stewart* is confirmed by Justice Holmes, himself, through his citation of that case in *Dickinson v. Stiles,* 246 U.S. 631 (1918). The issue in *Dickinson* was whether an FELA judgment was subject to an attorney's lien under a Minnesota statute. The railroad employee claimed that the FELA superseded the Minnesota statute, but Justice Holmes, speaking for a unanimous Court, ruled that the state statute was applicable. Justice Holmes cited *Stewart* for the proposition that the FELA "contemplated suits in state court and accepted state procedure in advance." *Id.* at 633. He thus affirmed that *Stewart* turned on a construction of congressional intent with respect to the FELA, rather than on any constitutional principle under the Fourteenth Amendment.

It is likewise inappropriate to suggest that the Alabama Supreme Court upheld the constitutionality of the Alabama Affirmance Penalty in *Atlanta, Birmingham & Coast Railroad v. Cary,* 250 Ala. 675, 35 So. 2d 559 (1948). (*See* Respondents' Brief, p. 8). There is no mention in that opinion of either Due Process or Equal Protection issues. The court reveals the arguments made by the defendant only as follows:

> We are cited to *Ellis v. Union Pacific Railroad Co.*, 329 U.S. 649, 67 S.Ct. 598, 91 L.Ed. 572, and *Bailey v. Central Vermont Railroad Co.*, 319 U.S. 350, 63 S.Ct. 1062, 87 L.Ed. 1444, which we consider here inapplicable.

250 Ala. at 679.

Both cited cases deal solely with the question of whether state law or FELA is controlling; neither case touches upon the Fourteenth Amendment. The Alabama Supreme Court correctly concluded that those preemption issues were resolved in the *Stewart* case.[1]

On the other hand, there is strong precedential value in those cases in which this Court has invalidated penalties assessed against a limited class for exercising the right of appeal. The Fourteenth Amendment was violated

— when tenants were required to pay a one hundred percent penalty, if their appeal failed, *Lindsey v. Normet,* 405 U.S. 56 (1972)

— when railroads were required to pay attorney fees of their opponent, if they lost an appeal, *Gulf, Colorado & Santa Fe Railway Co. v. Ellis,* 165 U.S. 150 (1897)

— when indigent criminal defendants who were incarcerated were required to pay for their transcript on appeal out of income from prison industry, if their appeal was unsuccessful, *Rinaldi v. Yeager,* 384 U.S. 305 (1966).

A. Equal Protection

1. Character of the Right

The Woods do not dispute that there is a fundamental right of equal access to an established appellate system. (*See* Peti-

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[1] Due Process and Equal Protection issues were raised in *Central of Georgia Railway Co. v. Steed,* 287 Ala. 64, 248 So. 2d 110 (1971), but the Alabama Supreme Court deemed itself to be bound by the precedent of the *Stewart* case. As stated in our previous brief, the reliance on *Stewart* was misplaced. (Petitioner's Brief, p. 12 n. 3).

tioner's Brief, pp. 13-16). Instead they base their position on a contention that there is no constitutional right to a stay of execution pending appeal, citing two lower court decisions.[2]

The question in this case does not hinge on any constitutional right to a stay. State and federal rules of court indisputably establish a right to a stay without regard to the Constitution. The crux of the matter here is that, in providing statutory procedures for a stay, the state must conform to Equal Protection and Due Process principles whether or not those procedures were mandated by the Constitution.

This Court has long affirmed that Equal Protection is to be afforded to litigants engaged in the appellate process. *E.g. Lindsey v. Normet,* 405 U.S. 56 (1972); *Rinaldi v. Yeager,* 384 U.S. 305 (1966); *Griffin v. Illinois,* 351 U.S. 12 (1956). *Cf. Aetna Life Insurance Co. v. LaVoie,* 54 U.S.L.W. 4381 (U.S. April 22, 1986). The conclusion of Justice Stewart in *Rinaldi v. Yeager,* 384 U.S. at 310, that it is fundamental that the appellate process should be free from unreasoned distinctions, is founded in the nature of the judicial process. The constitutional vitality of the system of justice depends on the preservation of fairness and impartiality at all levels. For example, due process was violated when a state supreme court justice was demonstrated to have a financial stake in the outcome of a case before him, *Aetna Life Insurance Co. v. LaVoie,* 54 U.S.L.W. 4381 (U.S. April 22, 1986), when a traffic court was conducted by a mayor who assessed fines that benefited his city, *Ward v. Village of*

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[2] *Devito v. Imbriano,* 30 A.D.2d 796, 333 N.Y.S.2d 577 (N.Y. App. Div. 1972), *aff'd* 350 N.Y.S.2d 406 (1973), which is of doubtful validity in light of this Court's decision in *Lindsey v. Normet,* 405 U.S. 56 (1972), decided shortly after *Devito;* and *Empire State Insurance Co. v. Chafetz,* 302 F.2d 828 (5th Cir. 1962), which did not deal with a stay, or even appellate procedure, but instead held that a statutory requirement to award attorney's fees to a successful plaintiff was constitutional. (Respondents' Brief, pp. 10-11).

Monroeville, 409 U.S. 57 (1972), and when administrative hearings were conducted by a board of optometry composed of members who were competitors of the petitioner, *Gibson v. Berryhill,* 411 U.S. 564 (1973). Equal access to appellate courts stands on a similar constitutional footing. When the scales of justice are tipped one way or the other, the process is corrupted and the credibility of the institution is impaired.

The Woods claim that the penalty is attached to the stay rather than the appeal. (Respondents' Brief, p. 14). In analyzing the significance of this argument, it is noteworthy that there is no procedure in Alabama for the protection of defendants who pay a judgment which is ultimately reversed. If Burlington Northern had paid the Woods $305,000 and then obtained a reversal, their only assurance of repayment would be the credit worthiness of the Woods, themselves. When the sole appellate procedure for protecting the defendant's rights in the event of reversal is supersedeas, the contention that the appeal and the stay are separate matters is based more on semantics than on reality.

Finally, the Woods argue that "wide latitude" is given to the state on issues of constitutionality, citing *City of Cleburne v. Cleburne Living Center,* 53 U.S.L.W. 5022 (U.S. July 1, 1985). What they don't explain is that the wide latitude mentioned in that case is granted when "social or economic legislation is at issue," *Id.* at 5023,[3] a far cry from the fundamental issues of ap-

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[3] The *City of Cleburne* case is also distinguishable in that it deals with the nature of the classification (mentally retarded persons, in that instance) rather than the nature of the right affected. Although the analytical frameworks of the "suspect classification" cases and the "fundamental right" cases are closely similar, there is a difference in *focus* between the two types of cases. When the issue is whether a class is suspect, the emphasis is on the position of the class in society and its tendency to be subjected to deep-seated prejudice. On the other hand, in determinations as to whether a right is fundamental, the primary inquiry is directed toward the importance of the free exercise of that right in the constitutional scheme. See *Plyler v. Doe,* 457 U.S.

pellate justice addressed by the case at bar.[4]

2. State Interest

Burlington Northern demonstrated that the two interests cited by the Alabama courts—to dissuade frivolous appeals and to provide additional damages—are insufficiently compelling to justify imposing unequal and unfair burdens on those persons required to pay the penalty. (Petitioner's Brief, pp. 16-23). The Woods avoid these stated justifications and suggest as an alternative rationale that the windfall damages can be supported on the ground that "the money eventually paid the plaintiffs does not have the same purchasing power." (Respondents' Brief, p. 15).

The Woods do not claim that the Alabama Legislature in 1820 was attempting to compensate for inflation when the Alabama Affirmance Penalty was enacted, nor do they present any state court or legislative pronouncement to support their conjecture. Moreover, they can point to nothing in the scheme of the Alabama Affirmance Penalty that approximates the impact of inflation. For instance, the penalty remains at a flat ten percent regardless of the time elapsing during the appeal period. The appeal decided within six months would provide an award on a twenty percent per annum basis; while, if the case lingers for two years, the effective annual rate is five percent.[5]

202, 216-17, nn. 14, 15 (1982). It is, therefore, not particularly useful to rely upon cases such as *City of Cleburne,* which identify whether a class is suspect, to decide whether a right is fundamental, as in the present case.

[4] The Woods similarly mis-apply *Williamson v. Lee Optical,* 348 U.S. 483 (1955) (Respondents' Brief, p. 20), since that case also deals with economic regulation.

[5] The ironic result is that the quicker the judgment is paid, the greater the penalty on a proportionate basis. Such a result would seem to punish more severely those defendants who pay their superseded judgments most promptly and reward slower payment, which encourages the evil which the Woods perceive to require a remedy.

Furthermore, the effect of inflation can be just as great on the partially modified award as on that which is totally affirmed, but the penalty is provided only when there is a complete affirmance. Finally, the judgment creditor with an unsatisfied, but unsuperseded, judgment receives no benefit from the penalty, even though inflation would have the same impact and the defendant would presumably be more culpable when no bond is provided and payment has been avoided.

The Woods overlook the fact that the twelve percent annual interest awarded on a judgment under Alabama law compensates for inflation. They contend, "When it [the defendant] finally pays the interest on the judgment, it is doing nothing more than returning to the plaintiff what was earned on the plaintiff's money while being wrongfully withheld." (Respondents' Brief, p. 15). Interest is indeed designed to return what is earned on the plaintiff's money while the case is being resolved, and that return on investment includes an accommodation for the decreased purchasing power of money.

The relation between interest and inflation was thoroughly explored in another context by this Court in *Jones & Laughlin Steel Corp. v. Pfeifer,* 462 U.S. 523 (1983). Justice Stevens pointed out:

> Price inflation—or more precisely, anticipated price inflation—certainly affects market rates of return. If a lender knows that his loan is to be repaid a year later with dollars that are less valuable than those he has advanced, he will charge an interest rate that is high enough both to compensate him for the temporary use of the loan proceeds and also to make up for their shrinkage in value.

Id. at 538-9.

The Court then explored the relationship between interest rates and inflation and concluded that a trial court should not be reversed if it adopts a discount rate on the present value of future wage loss of between one percent and three percent and

explains its choice. *Id.* at 791. The net effect of this ruling was to recognize that the portion of interest earned on the safest and best investments, in excess of one percent to three percent, may be properly attributable to compensation for anticipated inflation. Thus, an interest rate of twelve percent would carry an implicit assumption that nine percent to eleven percent interest would compensate for inflation.

The Woods unwittingly provide data which confirm the appropriateness of the conclusion that interest rates are designed to compensate for loss in purchasing power. Their brief argues that:

> Had the judgment in this case been paid on the day it was entered (January 13, 1984), $305.20 would have purchased $100 worth of 1967 goods and services. When the judgment was affirmed in the Eleventh Circuit (August 16, 1985), it took $323.50 to buy the same necessities of life.

Respondents' Brief, p. 16.

Applying these figures to the amount of the original judgment, roughly $305,000 in January 1984 would have the same purchasing power as $323,000 in August 1985. In addition, the three percent annual charge for the loss of the use of money, as recognized in *Jones & Laughlin,* during this period would add another $14,487.50. During the nineteen months' interim, however, twelve percent simple annual interest on the initial $305,000 would earn approximately $57,950, so that by the time the affirmance was entered, the award would be increased to approximately $362,950, plus costs. Not only does the award with interest keep up with the actual rate of inflation and the maximum three percent charge for loss of use of money, but the plaintiffs receive more than $25,000 extra. The imposition of an additional ten percent Affirmance Penalty, amounting to $30,500 above and beyond the post-judgment interest, cannot therefore be considered anything but a "windfall." It certainly is not needed to offset inflation.

3. Statutory Classification

Burlington Northern discussed in the previous brief the irrationality of the Alabama Affirmance Penalty from the standpoint of both underinclusiveness and overinclusiveness. (Petitioner's Brief, pp. 20-23). We asked the following question: "Is there any reason to believe that frivolous or delay appeals are the exclusive province of defendants in cases affected by the statute as opposed to plaintiffs or to defendants in other kinds of cases?" (Petitioner's Brief, p. 21). The Woods seem to answer that question affirmatively. They reason, "There is an incentive for a defendant to appeal"; on the other hand, "A plaintiff has no incentive for filing a useless appeal." (Respondents' Brief, p. 19).

It is understandable that a well-informed plaintiff may find little reason to institute a worthless appeal. The appellant must pay the cost of a transcript and costs of appeal, not to mention the investment of the human resources of the client dedicated to participation in appeal activities and the risk of legal precedent adverse to the client. However, the defendant is also subject to those deterrents, plus the cost of supersedeas bond, legal fees,[6] and a generous interest award, which the Woods assert has no deterrent effect.

If there were a significant difference in the habits of plaintiffs and defendants in taking appeals, we would expect the appellate courts to be affirming a larger number of appeals taken by defendants than by plaintiffs. Such is not the case. We have examined, as a sampling, the appeals taken in the six most recent bound volumes of Southern Reporter, Second Series. (*See* Appendix A). The results are consistent running across the state lines of the four states reported in those volumes. A greater number of appeals filed by plaintiffs were affirmed than was the

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[6] The plaintiff may have legal fees to pay also, but normally there is a contingent fee arrangement.

case for appeals by defendants in each state. Three hundred eighty-two plaintiffs lost their appeals by affirmance as opposed to only two hundred eighty-six defendants. In Alabama, seventy-three plaintiffs were losing appellants as compared with sixty-five defendants.

Another way to test the validity of the Woods' assumption is to examine those cases in which the courts have actually found frivolous appeals to exist under Rule 38 of the Rules of Appellate Procedure. We performed a Westlaw search to identify all instances in which the Court of Appeals in the Eleventh Circuit (and the predecessor Fifth) invoked a penalty for frivolous or delay appeals. (*See* Appendix B). Of the twenty-one occasions when the penalty was invoked, a plaintiff was the offending party seventeen times. A similar search of Alabama cases revealed that plaintiffs filed three appeals found to be frivolous, and defendants filed two. (*See* Appendix C). We submit that it would be much fairer to assume that most litigants, both plaintiff and defendant, exercise the right of appeal when they believe that there is a reasonable opportunity to obtain a better result on an appeal than has occurred at trial.

B. Due Process

The Woods ignore the arguments by Burlington Northern that the Alabama Affirmance Penalty violates the Due Process Clause of the Fourteenth Amendment.

III. THE ALABAMA AFFIRMANCE PENALTY IS A RULE OF PROCEDURE AND IS NOT APPLICABLE TO ACTIONS IN FEDERAL COURT

A. Federal Rules of Appellate Procedure Are Controlling

The Alabama Affirmance Penalty should not be assessed in federal court because it is inconsistent with the Federal Rules of Appellate Procedure, which entirely govern procedural matters in federal appellate court. (Petitioner's Brief, pp. 30-32).

The Woods argue that the Alabama Affirmance Penalty neither collides with nor avoids nor displaces the Federal Rules of Appellate Procedure. They claim that the Alabama Affirmance Penalty

> addresses a problem that the federal rules do not. The Alabama statute applies only if: (1) a money judgment is entered; (2) the judgment is stayed on appeal; and (3) the appellate court affirms the judgment.

Respondents' Brief, p. 24.

The Woods overlook Rule 8 of the Federal Rules of Appellate Procedure, which authorizes a stay of money judgment pending appeal and bond protection in the event of affirmance. In addition, Rule 37 of the Federal Rules of Appellate Procedure provides for interest on an affirmed judgment.[7] Where the three factors described by the Woods in the above-quoted passage occur in federal court, the appellees receive full payment of judgment, plus interest and costs. The problem, if there is one, is indeed addressed. The Woods' difficulty is that the solution they prefer is not available.

The Woods also disregard Rule 1 of the Federal Rules of Appellate Procedure, which states, "These rules govern procedure in appeals to the United States courts of appeals from the United States District Courts . . ." To reach outside the Federal Rules of Appellate Procedure to the Code of Alabama for procedural guidance creates a clear and direct conflict.

Implicit in the Woods' argument is an assumption that there is no conflict with Rule 8 or Rule 38 unless specific words of express prohibition, such as "no affirmance penalty shall be

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[7] The method of arriving at a rate of interest, and the method of compounding interest, are set forth in 28 U.S.C. § 196(a)(b). The state law with respect to procedure for levy of execution on judgment is expressly incorporated by reference in subsection (a) of the same statute.

awarded," can be found in the federal rules. On the contrary, to allow the insertion of local procedural rules whenever the federal rule is silent, without first assessing whether the scope of the federal rule already covers the subject, would create a hodge podge, nonuniform system in the federal court, running counter to the purpose of the Federal Rules.

B. The Alabama Affirmance Penalty Is a Procedural Provision

Even if the Federal Rules of Appellate Procedure did not preempt the state statute, the Alabama Affirmance Penalty should not be used in federal court under the general principles of *Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938), and its progeny. (Petitioner's Brief, pp. 34-42). The Woods comment on this argument by suggesting that defendants would be accorded significantly better treatment in federal court than in state court if the affirmance penalty were not applied in federal court. (Respondents' Brief, p. 24, n.6). Whether there is a difference in some aspect of the result is not the test of whether a rule is substantive in the *Erie* sense. In *Hanna v. Plumer,* 380 U.S. 460 (1965), it was argued that since a different party might prevail, depending on whether the state or federal rule on service of process was applied in that case, the rule should be considered a substantive one. Chief Justice Warren responded, "But in this sense *every* procedural variation is 'outcome-determinative.' " *Id.* at 468. To treat the rule as substantive, however, the variation must be so substantial that it becomes the lodestar which guides the litigant to choose a particular court. Chief Justice Warren continued. "Though choice of the federal or state rule will at this point have a marked effect upon the outcome of the litigation, the difference between the two rules would be of scant, if any, relevance to the choice of forum." *Id.* at 469. The same is true with regard to application of the Alabama Affirmance Penalty.

The Woods do, however, in another context place great emphasis on a case in which the Court has interpreted an affir-

mance penalty statute as procedural, rather than substantive. In *Louisville & Nashville Railroad Co. v. Stewart,* 241 U.S. 261 (1916), this Court held that an affirmance penalty in Kentucky was not preempted by the Federal Employers' Liability Act, because the FELA "accepted state procedure in advance." *Dickinson v. Stiles,* 246 U.S. 631, 633 (1918). Justice Holmes saw the affirmance penalty strictly as a state procedural device. a state procedural device.

CONCLUSION

The Alabama Affirmance Penalty stands as a discriminatory and punitive blight on the administration of justice in Alabama. We submit that it is due to be declared unconstitutional, or in the alternative, it should not be assessed in diversity actions in the federal courts.

Respectfully submitted,

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APPENDIX

APPENDIX A

Table of Affirmances

This Table was derived by reviewing all the reported cases in the six most recent (as of October 9, 1986) bound volumes of the Southern Reporter, Second Series (Volumes 483-488 So. 2d). The first step was the elimination of all criminal cases and all cases in which it could not be determined clearly, from the printed opinion, whether the appellant had been the plaintiff or the defendant (but not both, through cross-claims or cross-appeals) in the court below. Of the remaining cases, those in which the lower court's decision was affirmed in toto, without modification or amendment, are listed below:

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1193	Louisiana	Maise v. Demarest	Defendant
1215	Louisiana	CNG Producing Co. v. Sooner Pipe and Supply Co.	Plaintiff
1221	Louisiana	Therrien v. Therrien	Defendant
1228	Louisiana	Succession of Beard	Defendant
1231	Louisiana	Hoffman v. Louisiana Department of Public Safety	Defendant
1234	Louisiana	Henican, James & Cleveland v. Carr	Plaintiff
1237	Louisiana	Hansen v. Hansen	Defendant
1250	Louisiana	Loyola University v. Deutsch	Plaintiff
1252	Louisiana	Kubnick v. Sorum	Plaintiff

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1253	Louisiana	Labrosse v. St. Bernard Parish School Board	Defendant
1272	Louisiana	Mitchell v. Orleans Parish School Board	Plaintiff
1284	Louisiana	Kendall v. WDSU-TV Newscenter 6	Plaintiff
1290	Louisiana	Toups v. Liberty Mutual Insurance Co.	Plaintiff
1298	Louisiana	Mixon v Department of Police	Plaintiff
1307	Louisiana	Brinks v. Brinks	Plaintiff
1310	Louisiana	Crown Buick, Inc. v. Bercier	Plaintiff
1313	Louisiana	Forest v. State	Defendant
1365	Alabama	Board of Commissioners of Wilcox County v. Board of Trustees of the University of Alabama	Defendant
1366	Alabama	Clary v. State Department of Pensions and Security	Plaintiff
1373	Florida	Cheek v. McGowan Electric Supply Co.	Defendant

Totals for Volume 483:	Plaintiff as Losing Appellant:	55
	Defendant as Losing Appellant:	44
Totals for Alabama Cases in Volume:	Plaintiff as Losing Appellant:	6
	Defendant as Losing Appellant:	3

Totals for Florida Cases in Volume:	Plaintiff as Losing Appellant:	19
	Defendant as Losing Appellant:	19
Totals for Louisiana Cases in Volume:	Plaintiff as Losing Appellant:	27
	Defendant as Losing Appellant:	20
Totals for Mississippi: Cases in Volume:	Plaintiff as Losing Appellant:	3
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43	Florida	Jones v. Jack Maxton Chevrolet, Inc.	Plaintiff
64	Florida	Blue Cross and Blue Shield of Florida v. Greater Miami Hebrew Academy	Plaintiff
83	Florida	Wade v. Wade	Plaintiff
92	Florida	L. L. v. Zipperer	Plaintiff
148	Louisiana	First National Bank of Commerce v. Seale	Defendant
168	Louisiana	Scott v. Hospital Service District No. 1	Defendant
177	Louisiana	Cox v. Cadaro	Defendant
190	Louisiana	Mascair v. Blache	Plaintiff
196	Louisiana	Anderson v. Rabb	Plaintiff
206	Louisiana	In re RLV	Defendant
226	Louisiana	Morgan Products, Inc. v. Davis	Defendant
227	Louisiana	Terral v. Poole	Defendant
231	Louisiana	Sam . XYZ Insurance Co.	Plaintiff
233	Louisiana	Savoy v. Jones	Plaintiff
236	Louisiana	Elliot v. Pelican Truck Line, Inc.	Plaintiff
239	Louisiana	I. E. Miller of Eunice, Inc. v. Source Petroleum, Inc.	Defendant

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249	Louisiana	Gregory v. Lachney	Plaintiff
252	Louisiana	Beauregard v. Beauregard	Defendant
260	Louisiana	Tweedel v. Tweedel	Plaintiff
263	Louisiana	White v. Trans-World Life Insurance Co.	Plaintiff
269	Louisiana	Allen v. Allen	Defendant
272	Louisiana	Rue v. Board of Trustees	Plaintiff
280	Louisiana	Noreco, Inc. v. Blessing	Defendant
282	Louisiana	Parrino v. Royal Insurance Company of America	Defendant
289	Louisiana	Nolan v. Attwood	Plaintiff
292	Louisiana	Bank of Iberia v. Bronco Realty, Inc.	Plaintiff
306	Louisiana	Stone v. Louisiana Pacific Corp.	Plaintiff
315	Louisiana	Terry, Inc. v. Bell	Plaintiff
329	Mississippi	National Life and Accident Insurance Co. v. Miller	Defendant
375	Alabama	Allstate Enterprises, Inc. v. Alexander	Defendant
384	Alabama	Moorehead v. Burks	Plaintiff
393	Alabama	Calhoun v. Haas	Plaintiff
395	Alabama	Parker v. Baptist Home for Senior Citizens	Plaintiff

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401	Alabama	O'Neal v. Macon County Board of Education	Defendant
407	Alabama	First State Bank of Franklin County v. Ford	Defendant
409	Alabama	Sammons v. Ritchey	Defendant
412	Alabama	Warren v. Riggins	Defendant
418	Alabama	J. F. Pate Contractors v. Mobile Airport Authority	Plaintiff
430	Alabama	Alford v. Jeffcoat	Defendant
435	Alabama	Surette v. Brantley	Defendant
437	Alabama	Menefee v. Veal	Plaintiff
439	Alabama	Foy v. Foy	Plaintiff
444	Alabama	Willis v. Ideal Basic Industries, Inc.	Plaintiff
451	Alabama	Lawler v. Lee County Department of Pensions and Security	Plaintiff
459	Alabama	McClendon v. Shelby County	Plaintiff
466	Alabama	Vaughn v. State of Alabama Department of Pensions and Security	Defendant
474	Alabama	Crayton v. City of Mobile	Plaintiff
637	Florida	Chapman v. Florida Patient's Compensation Fund	Plaintiff
639	Florida	Sardinas v. M.C.A., Inc.	Plaintiff

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676	Louisiana	Overmier v. Traylor	Defendant
706	Louisiana	Central Metairie Civic Association, Inc. v. Jefferson Parish Council	Plaintiff
722	Louisiana	Alexander v. Department of Health and Human Resources	Plaintiff
743	Louisiana	Hebert v. Weaver	Plaintiff
750	Louisiana	Caruthers v. Caruthers	Plaintiff
753	Louisiana	Burton v. Foret	Defendant
761	Louisiana	Freyoux v. Estate of Bousegard	Plaintiff
777	Louisiana	Rasmussen v. Cashio Concrete Corp.	Defendant
780	Louisiana	Prime Time Television v. Coastal Computer Systems, Inc.	Defendant
783	Louisiana	Wallace v. Ketchum	Plaintiff
795	Louisiana	Broussard v. Arthur Dooley & Son, Inc.	Plaintiff
813	Louisiana	Varnado v. Insurance Corporation of America	Plaintiff
824	Louisiana	Simmons v. Parish of East Baton Rouge	Plaintiff
825	Louisiana	Baum v. Dick Henley, Inc.	Defendant
840	Louisiana	Berard v. State of Louisiana Department of Health and Human Resources	Plaintiff

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857	Louisiana	Harper v. Louisiana State Board of Nursing	Plaintiff
959	Louisiana	Pevey v. Pevey	Defendant
986	Louisiana	Dobson v. Aetna Casualty and Surety Co.	Defendant
986	Louisiana	Taylor v. Dupree	Defendant
991	Louisiana	Petty v. Dupree	Defendant
993	Louisiana	Miller v. State of Louisiana	Defendant
998	Mississippi	City of Jackson v. Pittman	Plaintiff
1015	Mississippi	Olson v. Flinn	Plaintiff
1052	Alabama	Dobbs v. State Department of Pensions and Security	Defendant
1055	Alabama	Stewart v. Lowery	Defendant
1061	Alabama	Gulf House Association, Inc. v. Town of Gulf Shores	Plaintiff
1069	Alabama	Abel v. Forrest Realty, Inc.	Plaintiff
1075	Alabama	Cunningham v. Etowah Quality of Life Council	Plaintiff
1077	Alabama	Boles v. Blackstock	Plaintiff
1090	Alabama	Topline Retreads of Decatur, Inc. v. Moore	Defendant
1092	Alabama	Heffner v. Heffner	Defendant
1093	Alabama	Wynn v. Wynn	Defendant
1097	Alabama	Baker v. Townsend	Plaintiff

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1104	Alabama	Schneider v. Schneider	Plaintiff
1106	Alabama	Eady v. Dixie Dozer & Equipment Co., Inc.	Defendant
1111	Alabama	Gibson v. Gibson	Plaintiff
1114	Alabama	Phelps v. Phelps	Defendant
1117	Alabama	Bailey v. Alabama Department of Pensions and Security	Defendant
1316	Florida	Price v. McClain	Plaintiff
1331	Florida	Zoning Board of Monroe County v. Hood	Defendant
1340	Florida	Micro Plus, Inc. v. Forte Data Systems, Inc.	Defendant
1363	Florida	American States Insurance Co. v. Allstate Insurance Co.	Plaintiff
1370	Florida	Tucker v. Fianson	Defendant
1374	Florida	Broward County v. LaRosa	Defendant
1380	Florida	Bayboro Marine, Inc. v. MacFarlane	Defendant
1382	Florida	Harvey v. Mattes	Plaintiff
1389	Florida	Associated Home Health Agency, Inc. v. Lore	Defendant

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Defendant as Losing Appellant: 46

Totals for Alabama Cases in Volume:	Plaintiff as Losing Appellant:	18
	Defendant as Losing Appellant:	17
Totals for Florida Cases in Volume:	Plaintiff as Losing Appellant:	9
	Defendant as Losing Appellant:	7
Totals for Louisiana Cases in Volume:	Plaintiff as Losing Appellant:	26
	Defendant as Losing Appellant:	21
Totals for Mississippi Cases in Volume:	Plaintiff as Losing Appellant:	2
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1	Florida	Smalls v. State Unemployment Appeals Commission	Plaintiff
3	Florida	Newham v. Union Correctional Institute	Defendant
34	Florida	City of Sweetwater v. Penedo	Plaintiff
41	Florida	Cheung v. Leon	Defendant
69	Louisiana	Lambert v. Metrailer	Defendant
93	Louisiana	Courtesy Ford, Inc. v. Weatherly	Defendant
122	Louisiana	McKeithen v. Hogan	Plaintiff
142	Louisiana	Ligon v. Angus	Defendant
145	Louisiana	Malone v. Celt Oil, Inc.	Plaintiff
150	Louisiana	Osborne v. McCoy	Defendant
168	Louisiana	Fowler v. State Farm Fire & Casualty Insurance Co.	Plaintiff
171	Louisiana	Elmer v. Coplin	Plaintiff
204	Louisiana	Teague v. Sawyer Drilling Co.	Plaintiff
234	Louisiana	Neighbors v. Commercial Union Insurance Co.	Defendant
237	Louisiana	Forgette v. Vernon Parish Police Jury	Plaintiff
253	Louisiana	Vermilion Parish Police Jury v. Landry	Defendant
295	Mississippi	McKinnon v. Batte	Plaintiff
302	Mississippi	Noxubee County School Board v. Cannon	Defendant
309	Mississippi	Calton v. Calton	Defendant

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326	Alabama	Seaboard System Railroad, Inc. v. Page	Defendant
330	Alabama	Bebco Distributors, Inc. v. Farmers & Merchants Bank	Plaintiff
336	Alabama	Financial Underwriters, Inc. v. Warren	Plaintiff
343	Alabama	Watwood v. Watwood	Plaintiff
347	Alabama	Connell v. Miller	Plaintiff
349	Alabama	Ray v. State Department of Pensions and Security	Defendant
442	Florida	Florida Rock Industries, Inc. v. Bystrom	Plaintiff
458	Florida	Larsen v. State Farm Mutual Automobile Insurance Co.	Plaintiff
512	Louisiana	Gambino v. Culp	Defendant
514	Louisiana	Keys v. Mercy Hospital of New Orleans	Defendant
523	Louisiana	Belsom v. Belsom	Defendant
525	Louisiana	Rayner v. Rayner	Defendant
536	Louisiana	Bosio v. National Tea Co.	Defendant
538	Louisiana	State in the Interest of T.J.	Defendant
543	Louisiana	Hawkins v. Hawkins	Plaintiff
544	Louisiana	St. Pierre's Fabrication and Welding, Inc. v. McNamara	Plaintiff
553	Louisiana	Tobin v. Thompson	Plaintiff
562	Louisiana	Barnett v. Barnett	Defendant

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589	Louisiana	Johnson v. Distribution and Transportation Co.	Plaintiff
593	Louisiana	Robin Seafood Co., Inc. v. Duggar	Defendant
594	Louisiana	Dupas v. City of New Orleans	Defendant
596	Louisiana	Abadie v. St. Barnard Parish School Board	Plaintiff
604	Louisiana	Prince v. Prince	Defendant
609	Louisiana	Wilcox v. Tillis	Plaintiff
611	Louisiana	Lewis v. Department of Sanitation	Plaintiff
622	Louisiana	Onyeanusi v. Times-Picayune Publishing Corp.	Plaintiff
623	Louisiana	Succession of Moran	Plaintiff
636	Louisiana	Verneuil v. Sewerage and Water Board of New Orleans	Defendant
639	Louisiana	Christoff v. Bergeron Industries, Inc.	Plaintiff
644	Louisiana	Whitaker v. Grappe	Plaintiff
651	Louisiana	Fox v. Department of Sanitation	Defendant
671	Louisiana	Estate of Fisher v. Otwell	Defendant
691	Mississippi	Cobb v. Cobb	Defendant
698	Alabama	Miller v. General Sales Co.	Plaintiff
711	Alabama	Miller v. Mashatt	Defendant
715	Alabama	Holman v. Kruk	Defendant

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716	Alabama	Smith v. Bay Minette Infirmary	Plaintiff
722	Alabama	Scofield v. Cheatham	Plaintiff
726	Alabama	Crabtrey v. Tew	Defendant
729	Alabama	Stiefelmeyer v. Stiefelmeyer	Defendant
733	Alabama	Sanford v. Jones	Defendant
735	Alabama	Heatherly v. Campbell	Defendant
738	Alabama	Houser v. Gipson	Plaintiff
740	Alabama	Wallace v. Wallace	Defendant
743	Alabama	Scudder v. Scudder	Defendant
746	Alabama	Miller v. Protective Life Insurance Co.	Defendant
750	Alabama	In re Bryant	Plaintiff
753	Alabama	Hayes v. Hayes	Defendant
757	Alabama	Adams v. City of Dothan Board of Education	Plaintiff
762	Alabama	Brown v. Brown	Defendant
765	Alabama	Turner v. State Employees' Retirement System	Plaintiff
767	Alabama	Cox v. Cox	Plaintiff
769	Alabama	Heatherly v. Carter	Defendant
772	Alabama	Southern Prestressed Concrete, Inc. v. Thomas	Defendant
845	Florida	Lansford v. Broward County Board of County Commissioners	Plaintiff

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857	Florida	Johns v. State Department of Health and Rehabilitative Services	Plaintiff
859	Florida	Della-Donna v. Department of Revenue	Plaintiff
871	Florida	Good Samaritan Hospital, Inc. v. Department of Health and Rehabilitative Services	Plaintiff
903	Florida	Spence v. Hughes	Plaintiff
915	Louisiana	Howard Trucking Co., Inc. v. Stassi	Plaintiff
947	Louisiana	T & R Dragline Service, Inc. v. Galan	Defendant
953	Louisiana	Robinett v. Sears, Roebuck and Co.	Plaintiff
965	Louisiana	Harris v. Sears, Roebuck & Co.	Defendant
970	Louisiana	Klein v. Klein	Defendant
985	Louisiana	Portal Boat Co. v. Stephens	Plaintiff
988	Louisiana	Bill Roberts, Inc. v. City of New Orleans	Plaintiff
994	Louisiana	Brown v. Brook Tarpaulin Co. of New Orleans	Plaintiff
1003	Louisiana	Ellis v. Hicks	Defendant
1008	Louisiana	Leonhard v. New Orleans East Orthopedic Clinic	Plaintiff

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1026	Mississippi	Hughes v. Tyler	Plaintiff
1066	Mississippi	Southern Oil & Gas, Inc. v. Hall	Plaintiff
1071	Mississippi	Blue Cross & Blue Shield v. Larson	Plaintiff
1088	Alabama	Lesley v. City of Montgomery	Plaintiff
1110	Alabama	Campbell v. Jefferson Federal Savings and Loan Association	Plaintiff
1114	Alabama	Bradford v. Kimbrough	Defendant
1119	Alabama	R & A Construction Products, Inc. v. First National Bank of Russellville	Defendant
1126	Alabama	Mullins v. Summers	Defendant
1131	Alabama	Colafrancesco v. Crown Pontiac-GMC, Inc.	Plaintiff
1134	Alabama	Pope & Quint, Inc. v. Davis	Plaintiff
1142	Alabama	Holman v. Joe Steele Realty, Inc.	Plaintiff
1152	Alabama	Johnson v. City of Fort Payne	Plaintiff
1157	Alabama	Motisi v. Alabama Gas Corp.	Plaintiff
1158	Alabama	Chapman v. Board of Adjustment	Plaintiff
1164	Alabama	Dawson v. Cole	Plaintiff

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1174	Alabama	Lutz v. Lutz	Defendant
1179	Alabama	Lindsey v. State Department of Pensions and Security	Defendant
1183	Alabama	Nelson v. Department of Pensions and Security	Defendant
1185	Alabama	Johnson v. State	Defendant
1190	Alabama	Jowers v. State Farm Mutual Insurance Co.	Plaintiff
1191	Alabama	Ford v. Massey	Defendant
1307	Florida	Wash-Bowl Vending Co., Inc v. No. 3 Condominium Association, Village Green, Inc.	Defendant
1314	Florida	Corona Properties of Florida, Inc. v. Monroe County	Plaintiff
1349	Florida	Metropolitan Dade County v. Brisker	Defendant
1353	Florida	Dixie National Bank v. Chase	Defendant
1361	Florida	Dionese v. City of West Palm Beach	Plaintiff
1374	Florida	Florida Power & Light Co. v. Jennings	Plaintiff

Totals for Volume 485: Plaintiff as Losing Appellant: 62
Defendant as Losing Appellant: 57

Totals for Alabama	Plaintiff as Losing Appellant:	22
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Totals for Florida	Plaintiff as Losing Appellant:	13
Cases in Volume:	Defendant as Losing Appellant:	5
Totals for Louisiana	Plaintiff as Losing Appellant:	23
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Totals for Mississippi	Plaintiff as Losing Appellant:	4
Cases in Volume:	Defendant as Losing Appellant:	3

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12	Florida	Palenzuela v. Dade County	Plaintiff
19	Florida	Gene Harris Travel Service, Inc. v. Harris Travel Service, Inc.	Defendant
24	Florida	Rugon Corp. v. Aetna Casualty and Surety Co.	Plaintiff
28	Florida	Landis v. Landis	Defendant
31	Florida	South v. Palm Bay Club, Inc.	Plaintiff
65	Florida	Stelzel v. South Indian River Water Control District	Plaintiff
129	Louisiana	Plaquemines Parish Commission Council v. Delta Development Co., Inc.	Plaintiff
180	Louisiana	Thibaut v. Thibaut	Plaintiff
190	Louisiana	Hastings v. Baton Rouge General Hospital	Plaintiff
197	Louisiana	Goodwin v. State Department of Public Safety and Corrections	Defendant
199	Louisiana	Bankston v. B & H Air Tools, Inc.	Plaintiff
201	Louisiana	Rodrigue v. Payne and Keller	Plaintiff
203	Louisiana	Fisk v. Warmack	Plaintiff
209	Louisiana	Ponder v. Succession of Wall	Plaintiff
210	Louisiana	Livingston v. Southern Scrap Material Co., Inc.	Plaintiff

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223	Louisiana	LeBlanc v. LeBianc	Plaintiff
228	Louisiana	Mire v. Power Rig Drilling Co., Inc.	Plaintiff
230	Louisiana	Andrew v. Andrew	Defendant
233	Louisiana	Andrew v. Andrew	Defendant
233	Louisiana	Hodge v. American Fidelity Fire Insurance Co.	Defendant
240	Louisiana	Hunt v. Insurance Company of North America	Plaintiff
255	Louisiana	Newmac/Bud Light Team Bass Circuit, Inc. v. Swint	Defendant
260	Louisiana	Succession of Ellis	Defendant
271	Louisiana	Royle v. Casualty Reciprocal Exchange	Defendant
276	Louisiana	Royle v. Casualty Reciprocal Exchange	Defendant
277	Louisiana	Ryder v. Casualty Reciprocal Exchange	Defendant
279	Louisiana	Melton v. Melton	Defendant
290	Louisiana	Foods & Services, Inc. v. SHRM Catering Services, Inc.	Defendant
294	Louisiana	Tarver v. Landers	Defendant
300	Louisiana	Crumbley v. Ditto Apparel of California, Inc.	Plaintiff
302	Louisiana	Svebek v. Melichar	Plaintiff

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317	Louisiana	Pepperdine v. South Louisiana Contractors, Inc.	Defendant
319	Louisiana	Henry v. Simmons Family Investments, Inc.	Plaintiff
352	Louisiana	Prudential Property Casualty Insurance Co. v. Stuckey	Plaintiff
370	Mississippi	Scafidel v. Crawford	Plaintiff
405	Alabama	Tuscaloosa City Board of Education v. American/Owens, Inc.	Plaintiff
408	Alabama	Hall v. Mazzone	Defendant
414	Alabama	Electrolux Motor AB v. Chancellor	Defendant
418	Alabama	Simpson v. Wolf Ridge Corp.	Plaintiff
424	Alabama	Cooper v. Ken Hilton Ford Sales, Inc.	Plaintiff
426	Alabama	K-Mart Corp. v. Butler	Defendant
426	Alabama	Payne v. Hoover, Inc.	Plaintiff
429	Alabama	Morton v. Jones	Plaintiff
432	Alabama	Dubose v. Dubose	Defendant
434	Alabama	Cofield v. Advertiser Co.	Plaintiff
435	Alabama	Kimberly-Clark Corp. v. Golden	Defendant
439	Alabama	Batey v. Jefferson County Board of Health	Defendant

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628	Florida	McNeil Barcelona Associates, Ltd. v. Daniel	Defendant
642	Florida	Reedy Creek Improvement District v. State Department of Environmental Regulation	Plaintiff
649	Florida	Trespalacios v. Valor Corporation of Florida	Plaintiff
662	Florida	Manufacturers Hanover Mortgage Corp. v. Rio Espana Corp.	Defendant
672	Florida	Beam v. University Hospital Building, Inc.	Plaintiff
673	Florida	Alderman v. Wysong & Miles Co.	Plaintiff
693	Florida	Driscoll v. O'Reilly	Plaintiff
697	Florida	Flick Mortgage Co. v. Microtel, Inc.	Defendant
701	Florida	Leek v. Reliance Insurance Co.	Plaintiff
816	Louisiana	McLean v. Hunter	Plaintiff
832	Louisiana	Neal v. Saizan	Plaintiff
834	Louisiana	Smith v. Intracoastal Truck Lines	Defendant
843	Louisiana	Gulf States Corp. v. Barberate	Defendant
917	Louisiana	Duplechain v. Garber Brothers, Inc.	Plaintiff

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927	Louisiana	George A. Hormel & Co. v. Ford	Defendant
929	Louisiana	United States Fidelity & Guaranty Co. v. Richardson	Defendant
938	Louisiana	American Title Insurance Co. v. Seago	Plaintiff
940	Louisiana	Drago v. Home Insurance Co.	Plaintiff
943	Louisiana	Matherne v. Gold Crest Cleaners, Inc.	Defendant
947	Louisiana	Sales Tax District No. 1 v. Express Boat Co., Inc.	Plaintiff
959	Louisiana	Divincenti v. Redondo	Defendant
968	Louisiana	Rozell v. Louisiana Animal Breeders Cooperative, Inc.	Plaintiff
974	Louisiana	Duplantis v. Farm Bureau Insurance Co.	Defendant
1018	Louisiana	Edwards v. Odom	Plaintiff
1027	Louisiana	Hart v. Hensley	Plaintiff
1044	Louisiana	McLain v. McLain	Plaintiff
1047	Louisiana	Sharff v. Tanner	Defendant
1056	Louisiana	Frederick v. Wright	Plaintiff
1076	Louisiana	American Bank & Trust Co. v. Cambre	Defendant
1098	Louisiana	Pacheco v. Pacheco	Defendant

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1122	Louisiana	City of Bossier City v. Sims	Plaintiff
1124	Louisiana	Succession of Jones v. Jones	Defendant
1129	Louisiana	Wood v. Cambridge Mutual Fire Insurance Co.	Plaintiff
1145	Louisiana	Snyder v. Alexandria City Council	Defendant
1159	Louisiana	George v. Breaux	Plaintiff
1164	Louisiana	Hall v. Doctor's Hospital of Tioga	Plaintiff
1170	Louisiana	Deblieux v. Sanders	Plaintiff
1171	Louisiana	Mason v. Administration of the Office of Employment Security	Plaintiff
1195	Louisiana	Guillory v. State	Plaintiff
1230	Mississippi	Perry v. Bridgetown Community Association, Inc.	Plaintiff
1253	Mississippi	Minor v. State Department of Public Welfare	Defendant
1262	Alabama	Moore v. Hornsby	Plaintiff
1263	Alabama	Morton v. Allstate Insurance Co.	Plaintiff
1293	Alabama	Co-op Pulpwood Co., Inc. v. Partridge	Defendant
1294	Alabama	Taylor v. Taylor	Defendant
1297	Alabama	McKeever v. McKeever	Plaintiff

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1302	Alabama	Tuscaloosa County v. Children's Hospital, Inc.	Defendant
1304	Alabama	McKiven v. C & L Trucking Co., Inc.	Plaintiff
1305	Alabama	Medical Laundry Service v. Board of Adjustment	Plaintiff
1378	Florida	Prestressed Systems v. Goff	Defendant

Totals for Volume 486:	Plaintiff as Losing Appellant:	60
	Defendant as Losing Appellant:	44
Totals for Alabama Cases in Volume:	Plaintiff as Losing Appellant:	11
	Defendant as Losing Appellant:	10
Totals for Florida Cases in Volume:	Plaintiff as Losing Appellant:	11
	Defendant as Losing Appellant:	7
Totals for Louisiana Cases in Volume:	Plaintiff as Losing Appellant:	36
	Defendant as Losing Appellant:	26
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	Defendant as Losing Appellant:	1

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59	Florida	Keyes Investors Series 20 Ltd. v. Department of State	Plaintiff
60	Florida	Moorings Development Co. v. Porpoise Bay Co., Inc.	Plaintiff
67	Florida	Robinson v. Robinson	Defendant
70	Florida	Riker v. Riker	Plaintiff
73	Florida	Marathon Trailerama, Inc. v. Department of Health and Rehabilitative Services	Defendant
94	Florida	Park-A-Partners v. Dade County	Plaintiff
99	Florida	Watkins v. Jackson	Defendant
118	Louisiana	Lee v. Badon	Defendant
120	Louisiana	Whitney National Bank v. Poydras Center Associates	Plaintiff
127	Louisiana	Schilling v. United States Fidelity & Guaranty Co.	Defendant
143	Louisiana	DePaul Hospital v. Mutual Life Insurance Co. of New York	Plaintiff
151	Louisiana	Sierra v. Schwegmann Giant Supermarkets, Inc.	Defendant
171	Louisiana	United Federal Savings and Loan Association v. Cage	Plaintiff
180	Louisiana	Till v. Delta School of Commerce, Inc.	Defendant

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187	Louisiana	Celestine v. Fireman's Fund Insurance Co.	Plaintiff
192	Louisiana	Foster v. Reliance Insurance Co.	Defendant
196	Mississippi	City of Pascagoula v. Scheffler	Defendant
220	Mississippi	State ex rel. Pair v. Burroughs	Plaintiff
228	Mississippi	Emerson Electric Co. v. McLarty	Defendant
237	Alabama	Noonan v. East-West Beltline, Inc.	Defendant
240	Alabama	Tucker v. Jefferson County Truck Growers' Association	Plaintiff
244	Alabama	Empiregas, Inc. of Ardmore v. Hardy	Defendant
252	Alabama	Harris v. Brewer	Plaintiff
319	Florida	C. E. Peters Landclearing, Inc. v. Gossington	Plaintiff
329	Florida	Mertz v. Lake Padgett Estates East Road and Bridge District	Plaintiff
331	Florida	Rios v. Junco	Plaintiff
332	Florida	Goldsmith v. Goldsmith	Plaintiff
336	Florida	Seidl v. Estate of Michelsen	Defendant

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352	Florida	Palumbo v. State Game and Fresh Water Fish Commission	Plaintiff
389	Florida	Karcher v. F. W. Schinz and Associates, Inc.	Plaintiff
395	Florida	Bonito Boats, Inc. v. Thunder Craft Boats, Inc.	Plaintiff
398	Florida	Aetna Casualty & Surety Co. v. Monsanto Co.	Defendant
410	Florida	Kings Point Community Association, Inc. v. Dravitch	Defendant
419	Florida	Watson v. Collins	Plaintiff
420	Florida	Grandstaff v. State Department of Health and Rehabilitative Services	Defendant
449	Louisiana	Morvant v. Kent's Nursery, Inc.	Plaintiff
459	Louisiana	Miller v. State Farm Fire and Casualty Co.	Plaintiff
461	Louisiana	Doe v. Cronan	Plaintiff
500	Louisiana	Vorbeck v. Edmunds	Plaintiff
503	Louisiana	May v. Lafayette Parish Police Jury	Plaintiff
512	Louisiana	Royal Insurance Co. v. B. J. McAdams, Inc.	Defendant
518	Louisiana	Liberty Personnel, Inc. v. Children's Hospital	Plaintiff

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Page	State	Style	Losing Appellant
528	Louisiana	Williams v. Department of Police	Defendant
529	Louisiana	Succession of Christophe v. Lotten	Defendant
533	Louisiana	Kavanaugh v. Orleans Parish School Board	Plaintiff
534	Louisiana	McKenzie v. New Orleans Police Department	Plaintiff
554	Louisiana	Gomes v. Ducote	Defendant
555	Louisiana	Sherlock v. Berry	Defendant
558	Louisiana	Breaux v. Lore	Defendant
577	Louisiana	Schmidt v. Holmes	Plaintiff
582	Louisiana	Emile M. Babst Co., Inc. v. Atlas Erection Co., Inc.	Plaintiff
587	Louisiana	Moliere v. Wright	Defendant
588	Louisiana	State Department of Transportation and Development v. Falcone	Defendant
593	Louisiana	Thompson v. City of New Orleans	Defendant
612	Louisiana	Charles v. Faust	Plaintiff
616	Louisiana	Segui v. Anthony	Plaintiff
625	Louisiana	Nasco Equipment Co. v. Briggs-Weaver, Inc.	Defendant
628	Louisiana	Wedge v. Anderson	Defendant
631	Louisiana	Sovereign Marine and General Insurance Co. v. Apcoa Parking Services, Inc.	Plaintiff

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Page	State	Style	Losing Appellant
635	Louisiana	Succession of Koch	Defendant
641	Louisiana	Parker v. Audubon Park Commission	Plaintiff
644	Louisiana	Gonsalves v. Dixon	Plaintiff
647	Louisiana	Morris v. Parish of Jefferson	Plaintiff
652	Louisiana	Shavers v. Olano	Defendant
655	Louisiana	Commercial Bank & Trust Co. v. Bank of Louisiana	Plaintiff
675	Louisiana	In re J.E.C. and P.A.C.	Defendant
686	Louisiana	Scott v. Fireman's Fund Insurance Co.	Plaintiff
689	Louisiana	Walker v. Miller's Group Insurance Co.	Defendant
693	Louisiana	Schultz v. Rodrigue	Defendant
700	Louisiana	Baker v. Grinnell Fire Protection Systems, Inc.	Defendant
729	Louisiana	Monju v. Continental Casualty Co.	Plaintiff
732	Louisiana	Long v. St. Paul Fire and Marine Insurance Co.	Plaintiff
756	Louisiana	Speyrer v. Prejean	Defendant
759	Louisiana	Clement v. Clement	Plaintiff
761	Louisiana	Major Mortgage Funding Corp. v. Fleeks	Plaintiff
763	Louisiana	German v. Andries	Defendant
764	Louisiana	Raymond v. State Farm Fire & Casualty Co.	Plaintiff

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Page	State	Style	Losing Appellant
771	Louisiana	Prudhomme v. Mervine Kahn Co.	Defendant
773	Louisiana	Simon v. Simon	Defendant
777	Louisiana	Rawson v. Jennings	Defendant
780	Louisiana	Guidry v. McZeal	Plaintiff
782	Louisiana	Hidalgo v. Terrell	Plaintiff
787	Louisiana	Gleason v. Milford	Plaintiff
798	Mississippi	Mississippi State Highway Commission v. Wood	Plaintiff
807	Mississippi	Hill v. Dunaway	Plaintiff
836	Mississippi	Roberts v. Grisham	Plaintiff
840	Mississippi	Colvin v. Colvin	Plaintiff
856	Alabama	Day v. Morgan County Commission	Plaintiff
866	Alabama	Mobile Dodge, Inc. v. Alford	Defendant
872	Alabama	Hollis v. Post	Defendant
884	Alabama	Barton v. Alabama Electric Cooperative, Inc.	Plaintiff
886	Alabama	McGee v. Corometrics Medical Systems, Inc.	Plaintiff
895	Alabama	State Department of Revenue v. Morrison Cafeterias Consolidated, Inc.	Defendant
909	Alabama	Averyt v. City of Mobile Fire Department	Plaintiff
930	Alabama	Garrett v. All South Bonding Co., Inc.	Defendant

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Page	State	Style	Losing Appellant
931	Alabama	Long v. Water Works and Sewer Board	Plaintiff
937	Alabama	Insurance Company of North America v. Chandler	Defendant
940	Alabama	Jackson v. Dunlop Tire & Rubber Corp.	Plaintiff
942	Alabama	City of Montgomery v. Bennett	Plaintiff
944	Alabama	Burdette v. State Department of Revenue	Plaintiff
947	Alabama	Moorer v. Moorer	Plaintiff
948	Alabama	Maker v. Maker	Defendant
1036	Florida	Gulf Power Co. v. Florida Public Service Commission	Defendant
1047	Florida	ITT Industrial Credit Co. v. Regan	Plaintiff
1082	Florida	McCrory Stores, Inc. v. Cleghorn	Defendant
1085	Florida	Blue Cross/Blue Shield v. Shufelt	Defendant
1091	Florida	Whack v. Seminole Memorial Hospital, Inc.	Plaintiff
1114	Florida	Sockolof v. Eden Point North Condominium Association, Inc.	Plaintiff
1132	Florida	Aurora Group, Ltd. v. Department of Revenue	Plaintiff
1140	Florida	Ehrens v. Press	Plaintiff

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Page	State	Style	Losing Appellant
1141	Florida	Shell Harbor Group, Inc. v. Department of Business Regulation	Plaintiff
1144	Florida	City of Jacksonville v. Alexander	Defendant
1147	Florida	Hall v. State Department of Health and Rehabilitative Services	Defendant
1148	Florida	Skaf v. Skaf	Plaintiff
1169	Florida	Herb's Exxon v. Whatmough	Defendant
1193	Florida	Rubin v. Centerbanc Federal Savings & Loan Association	Plaintiff
1205	Florida	Iglesia v. City of Miami Beach	Plaintiff
1254	Louisiana	Gonzalas v. Louisiana Power and Light Co.	Defendant
1259	Louisiana	Burton v. Foret	Defendant
1272	Louisiana	Hebert v. Lebouef	Defendant
1320	Mississippi	Mississippi Farm Bureau Mutual Insurance Co. v. Garrett	Defendant
1329	Mississippi	Adams v. Petal Municipal Separate School Systems	Plaintiff
1339	Mississippi	Ellis v. Mississippi State Highway Commission	Defendant
1342	Mississippi	Hathorn v. Hailey	Plaintiff
1369	Alabama	Bettinger v. Stephens Wholesale Building Supply Co., Inc.	Defendant

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Page	State	Style	Losing Appellant
1371	Alabama	Washington v. Warrior Tractor and Equipment Co., Inc.	Plaintiff

Totals for Volume 487:	Plaintiff as Losing Appellant:	72
	Defendant as Losing Appellant:	57
Totals for Alabama Cases in Volume:	Plaintiff as Losing Appellant:	12
	Defendant as Losing Appellant:	9
Totals for Florida Cases in Volume:	Plaintiff as Losing Appellant:	22
	Defendant as Losing Appellant:	14
Totals for Louisiana Cases in Volume:	Plaintiff as Losing Appellant:	31
	Defendant as Losing Appellant:	30
Totals for Mississippi Cases in Volume:	Plaintiff as Losing Appellant:	7
	Defendant as Losing Appellant:	4

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Page	State	Style	Losing Appellant
50	Florida	Department of Banking and Finance v. Standard Federal Savings and Loan Association	Plaintiff
93	Florida	Brevard Community College v. Barber	Defendant
103	Florida	Thompson v. Department of Professional Regulation	Defendant
112	Florida	Citizens of State v. Florida Public Service Commission	Plaintiff
121	Florida	WJA Realty Limited Partnership v. Employee Benefit Claims, Inc.	Plaintiff
140	Florida	Carley v. Seibels, Bruce & Co.	Plaintiff
155	Florida	Chance Pilkington Ltd. v. Visual Scene, Inc.	Defendant
176	Florida	Babine v. Gilley's Bronco Shop, Inc.	Plaintiff
181	Louisiana	Thomas v. Hanover Insurance Co.	Plaintiff
220	Louisiana	Tuscaloosa Commerce Bank v. Grady Bullock Enterprises, Inc.	Plaintiff
229	Louisiana	Palmer v. Palmer	Plaintiff
244	Louisiana	Thibodeaux v. Bordelon	Plaintiff
247	Louisiana	Cormier v. Castille	Plaintiff
249	Louisiana	Pals & Co. v. Hartford Insurance Co.	Plaintiff

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Page	State	Style	Losing Appellant
250	Louisiana	Ragsdale v. Sanders	Plaintiff
269	Louisiana	Pilgrim v. Williford Roofing & Sheet Metal, Inc.	Plaintiff
284	Louisiana	Sonnier v. Aetna Life & Casualty	Plaintiff
287	Louisiana	Barron v. Seis Pros, Inc.	Defendant
290	Louisiana	Kile v. Plaisance	Defendant
299	Louisiana	Barnhill v. Barnhill	Plaintiff
322	Louisiana	Brown v. Mayfield	Defendant
331	Louisiana	Toce Oil Co. v. Central Industries, Inc.	Defendant
340	Louisiana	Kalmn, Inc. v. Walker Louisiana Properties	Plaintiff
350	Louisiana	Gaspard v. Jefferson Insurance Co.	Plaintiff
353	Louisiana	Lysinger v. Security Industrial Insurance Co.	Defendant
358	Louisiana	Cupit v. Grant	Plaintiff
372	Louisiana	Russo v. Veran, Inc.	Defendant
379	Louisiana	Landry v. Travelers Insurance Co.	Defendant
393	Louisiana	Chambers v. Chambers	Plaintiff
395	Louisiana	Broussard v. Zim's Alignment Service, Inc.	Plaintiff
402	Louisiana	Decuir v. City of Marksville	Plaintiff
405	Louisiana	Decuir v. Tassin	Plaintiff
407	Louisiana	Haas v. Diocese of Lafayette	Defendant

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Page	State	Style	Losing Appellant
410	Louisiana	Haas v. Diocese of Lafayette	Defendant
410	Louisiana	Burleigh v. Affiliated Food Stores	Plaintiff
412	Louisiana	Touchet v. Champagne	Plaintiff
418	Louisiana	Touchet v. Champagne	Plaintiff
418	Louisiana	Girouard v. Touchet	Plaintiff
419	Louisiana	Wattigny v. Breaux	Plaintiff
426	Louisiana	Stephens v. Stephens	Plaintiff
437	Louisiana	Hatch v. Acadiana Bank & Trust Co.	Defendant
443	Louisiana	Riggs v. State	Plaintiff
445	Louisiana	Lions v. Lions	Defendant
457	Louisiana	Narcisse v. Cleco	Defendant
468	Louisiana	Roy v. Phelps	Defendant
481	Louisiana	Dunham-Price, Inc. v. Administrator, State Department of Employment Security	Plaintiff
484	Louisiana	Lake Charles Harbor & Terminal District v. City of Westlake	Defendant
491	Louisiana	McCormick v. Insured Lloyds Insurance Co.	Plaintiff
547	Florida	Riveron v. Jervis B. Webb Co. of Georgia	Plaintiff
548	Florida	Redding v. Stockton, Whatley, Davin & Co.	Defendant

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Page	State	Style	Losing Appellant
574	Florida	Feldman v. Glucroft	Plaintiff
607	Florida	Nixon v. Bryson	Plaintiff
618	Florida	John Ownbey Co. Inc. v. Bike Athletic Co., Inc.	Defendant
623	Florida	Westinghouse Electric Corp. v. Lawrence	Defendant
637	Florida	Farrior v. Farrior	Plaintiff
655	Florida	M.R.F. v. State	Defendant
675	Florida	Gelco Convention Services, Inc. v. Ray	Plaintiff
705	Louisiana	Daves Insurance Agency, Inc. v. State Division of Administration	Plaintiff
711	Louisiana	Rapides General Hospital v. Robinson	Plaintiff
736	Louisiana	Gifford v. New England Reinsurance Corp.	Plaintiff
739	Louisiana	Novak v. Lamar Insurance Co.	Plaintiff
743	Louisiana	Thibodeaux v. Southwest Louisiana Hospital Association	Plaintiff
749	Louisiana	Joubert v. Blache	Plaintiff
752	Louisiana	Sibille v. Hygeia International Systems, Inc.	Defendant
768	Louisiana	Paul v. Murray	Plaintiff
778	Louisiana	Rougeou v. Rapides Parish Police Jury	Plaintiff

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Page	State	Style	Losing Appellant
782	Mississippi	Mississippi State Highway Commission v. Franklin County Timber Co., Inc.	Plaintiff
797	Mississippi	Evans v. Journeay	Plaintiff
817	Alabama	Mitchell v. Imms	Plaintiff
818	Alabama	Chestang v. Skinner	Plaintiff
879	Florida	Barnes v. Escambia County Employees Credit Union	Defendant
897	Florida	Spooner v. Department of Corrections	Plaintiff
900	Florida	Victoria Village "G" Condominium Association v. City of Coconut Creek	Plaintiff
901	Florida	Barker v. City of Coconut Creek	Plaintiff
922	Florida	Bob's Pawn Shop, Inc. v. City of Largo	Plaintiff
927	Florida	Tandy Corp. v. Eisenberg	Defendant
950	Louisiana	Aetna Insurance Co. v. Naquin	Defendant
1032	Louisiana	Wall v. Sisters of Charity of the Incarnate Word	Plaintiff
1042	Louisiana	Matlock v. Butler-Johnson, Inc.	Plaintiff
1061	Louisiana	Henderson v. Administrator, Department of Labor	Plaintiff
1067	Louisiana	Banks v. Administrator, Louisiana Office of Employment Security	Plaintiff

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Page	State	Style	Losing Appellant
1089	Louisiana	Mitchell v. Fidelity & Casualty Co.	Plaintiff
1099	Louisiana	Producers Oil & Gas Co. v. Nix	Plaintiff
1104	Louisiana	Despot v. Stromatt	Defendant
1108	Louisiana	Guye v. International Paper Co., Inc.	Defendant
1116	Louisiana	Spencer v. Aetna Casualty & Surety Co.	Plaintiff
1134	Louisiana	Byrd v. Byrd	Defendant
1145	Louisiana	Wood v. State Department of Public Safety	Plaintiff
1153	Louisiana	Boykin v. Corless	Defendant
1159	Louisiana	Solice v. State Farm Mutual Automobile Insurance Co.	Plaintiff
1163	Louisiana	Prothro v. Dillahunty	Plaintiff
1169	Louisiana	Butts v. Cummings	Plaintiff
1187	Louisiana	Jones v. Jones	Defendant
1189	Louisiana	Kennair v. City of New Orleans	Plaintiff
1191	Louisiana	Peter M. Trapolin & Associates v. Twin City Federal Savings and Loan Association	Defendant
1230	Louisiana	Godchaux v. Godchaux	Defendant
1233	Louisiana	Massey v. Johnson	Plaintiff

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Page	State	Style	Losing Appellant
1244	Louisiana	Hills v. American Waste and Pollution Control Co., Inc.	Plaintiff
1248	Louisiana	Bickham v. Orleans Parish School Board	Plaintiff
1252	Louisiana	Shields v. Pennsylvania General Insurance Co.	Defendant
1261	Louisiana	Giraud v. Gillis, Ellis & Baker, Inc.	Plaintiff
1266	Louisiana	Roberts v. Blache	Plaintiff
1274	Louisiana	Dileo v. Bernstein	Plaintiff
1280	Louisiana	Poe v. New Orleans Public Service, Inc.	Defendant
1284	Louisiana	Clertech Group, Inc. v. International-Matex Tank Terminals	Defendant
1290	Louisiana	Foster v. Blache	Plaintiff
1293	Louisiana	King v. Ebasco Services, Inc.	Plaintiff
1300	Louisiana	Moore v. Lindeman	Plaintiff
1314	Louisiana	Duhon v. Allstate Insurance Co.	Defendant
1327	Louisiana	Laneaux v. Theriot	Plaintiff
1331	Louisiana	Gardiner v. Commercial Union Insurance Companies	Defendant
1338	Louisiana	Tannery v. McGee	Plaintiff
1342	Mississippi	Savage v. Parrish	Plaintiff
1348	Alabama	Vaughn v. Carter	Defendant
1356	Alabama	Isom v. Bledsoe	Plaintiff
1357	Alabama	Hill v. Sherwood	Plaintiff

Totals for Volume 488:	Plaintiff as Losing Appellant:	78
	Defendant as Losing Appellant:	38
Totals for Alabama Cases in Volume:	Plaintiff as Losing Appellant:	4
	Defendant as Losing Appellant:	1
Totals for Florida Cases in Volume:	Plaintiff as Losing Appellant:	14
	Defendant as Losing Appellant:	9
Totals for Louisiana Cases in Volume:	Plaintiff as Losing Appellant:	57
	Defendant as Losing Appellant:	28
Totals for Mississippi Cases in Volume:	Plaintiff as Losing Appellant:	3
	Defendant as Losing Appellant:	0
Totals for All Cases Listed, Volumes 483-488:	Plaintiff as Losing Appellant:	382
	Defendant as Losing Appellant:	286
Totals for Alabama Cases Listed, Volumes 483-488:	Plaintiff as Losing Appellant:	73
	Defendant as Losing Appellant:	65
Totals for Florida Cases Listed, Volumes 483-488:	Plaintiff as Losing Appellant:	88
	Defendant as Losing Appellant:	61
Totals for Louisiana Cases Listed, Volumes 483-488:	Plaintiff as Losing Appellant:	200
	Defendant as Losing Appellant:	149
Totals for Mississippi Cases Listed, Volumes 483-488:	Plaintiff as Losing Appellant:	21
	Defendant as Losing Appellant:	11

APPENDIX B

Rule 38, Federal Rules of Appellate Procedure, Invoked in the Eleventh Circuit

This Table was derived from a computer search, on September 15, 1986, conducted on Westlaw, of cases in the Court of Appeals of the Eleventh and predecessor Fifth Circuits. The query searched was: 38 /5 "FEDERAL RULES OF APPELLATE PROCEDURE" F.R.A.P. "FED. R. APP. P." FED.R.APP.P. This query was designed to capture all cases in which some version of the citation for the Federal Rules of Appellate Procedure appeared within five words of the number 38. A list of thirty-one documents was produced. The cases retrieved were read, to find those in which appellee's motion for invocation of Rule 38 Fed.R.App.P. was granted. The following cases were identified in which Rule 38 was invoked:

	Appellant
Stubbs v. Commissioner of Internal Revenue, 797 F.2d 936 (11th Cir. 1986)	Plaintiff
King v. United States, 789 F.2d 883 (11th Cir. 1986)	Plaintiff
Pollard v. Commissioner of Internal Revenue, 786 F.2d 1063 (11th Cir. 1986)	Plaintiff
Rush v. Macy's New York, Inc., 775 F.2d 1554 (11th Cir. 1985)	Plaintiff
Fortney v. United States, 774 F.2d 445 (11th Cir. 1985)	Plaintiff
Ricket v. United States, 773 F.2d 1214 (11th Cir. 1985)	Plaintiff
Bierman v. Commissioner of Internal Revenue, 769 F.2d 707 (11th Cir. 1985)	Defendant

	Appellant
Waters v. Commissioner of Internal Revenue, 764 F.2d 1389 (11th Cir. 1985)	Plaintiff
Collins v. Amoco Production Co., 706 F.2d 1114 (11th Cir. 1983)	Plaintiff
Allstate Insurance Co. v. International Shipping Corp., 703 F.2d 497 (11th Cir. 1983)	Plaintiff
National Service Industries, Inc. v. Vafla Corp., 694 F.2d 246 (11th Cir. 1982)	Defendant
In re Grand Jury Proceedings, 652 F.2d 413 (5th Cir. 1981)	Plaintiff
Cummings v. United States, 648 F.2d 289 (5th Cir. 1981)	Plaintiff
A. L. McAlister Trucking v. BHY Trucking, Inc., 642 F.2d 1000 (5th Cir. 1981)	Defendant
Burke v. Miller, 639 F.2d 306 (5th Cir. 1981)	Plaintiff
Watson v. Callon Petroleum Co., 632 F.2d 646 (5th Cir. 1980)	Defendant
Harris v. Plastics Manufacturing Co., 617 F.2d 438 (5th Cir. 1980)	Plaintiff
Church of Scientology of California v. McLean, 615 F.2d 691 (5th Cir. 1980)	Plaintiff
Exhibitors Poster Exchange, Inc. v. National Screen Service Corp., 543 F.2d 1106 (5th Cir. 1976)	Plaintiff
Monroe Auto Equipment Co. v. N.L.R.B., 511 F.2d 611 (5th Cir. 1975)	Plaintiff
Kinnear-Weed Corp. v. Humble Oil & Refining Co., 441 F.2d 631 (5th Cir. 1971)	Plaintiff

Totals: Plaintiff as Frivolous Appellant: 17
Defendant as Frivolous Appellant: 4

APPENDIX C

Rule 38, Alabama Rules of Appellate Procedure, Invoked

This Table was derived from a computer search, on September 15, 1986, conducted on Westlaw, of cases from the Alabama state court system. The query searched was: 38 /5 "ALABAMA RULES OF APPELLATE PROCEDURE" A.R.A.P. "ALA. R. APP. P." ALA.R.APP.P. This query was designed to capture all cases in which some version of the citation for the Alabama Rules of Appellate Procedure appeared within five words of the number 38. A list of thirty-seven documents was produced. The cases retrieved were read, to find those in which appellee's motion for invocation of Rule 38 Ala.R.App.P. was granted. The following cases were identified in which Rule 38 was invoked:

	Appellant
McAnnally v. Levco, Inc., 456 So. 2d 66 (Ala. 1984)	Defendant
RMP, Inc. v. Arledge, 417 So. 2d 158 (Ala. 1982)	Plaintiff
Millican v. Cantrell, 378 So. 2d 737 (Ala. 1979)	Defendant
Hutson v. Hutson, 351 So. 2d 588 (Ala. Ct. Civ. App. 1977)	Plaintiff
Boone v. Director of the Department of Public Safety, 337 So. 2d 6 (Ala. 1976)	Plaintiff

Totals: Plaintiff as Frivolous Appellant: 3
Defendant as Frivolous Appellant: 2